

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 23 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0113-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ERNESTO LIZARRAGA CARRASCO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR20032120; CR20090898001

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorneys for Petitioner

B R A M M E R, Judge.

¶1 In this petition for review, petitioner Ernesto Carrasco challenges the trial court's denial of relief on two of the three claims presented in a petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's denial of post-conviction relief unless we find it clearly has abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 Carrasco filed his petition below in two separate cases. In CR20032120, he had been convicted after a jury trial and placed on five years' probation for two counts of aggravated driving under the influence of an intoxicant (DUI).¹ He subsequently absconded from probation in late 2007, was arrested again for DUI in February 2009, and was indicted in CR20090898001 on four new counts of aggravated DUI. At a joint change-of-plea and probation-revocation hearing in both causes in April 2009, Carrasco pled guilty to one count of aggravated DUI in CR20090898001, and the trial court found he had violated his probation in CR20032120 based on his admission to having committed that felony while on probation. At the combined sentencing and disposition hearing on May 8, 2009, the court imposed consecutive sentences totaling 5.5 years' imprisonment.

¶3 Carrasco then filed a petition for post-conviction relief, raising three claims. First, he asserted the Arizona Department of Corrections (ADOC) had miscalculated the length of his sentences as totaling eight rather than 5.5 years' imprisonment. Second, he alleged counsel had rendered ineffective assistance at sentencing by failing to present

¹This court affirmed his convictions and probationary term on appeal. *State v. Carrasco*, No. 2 CA-CR 2003-0400 (memorandum decision filed July 27, 2004).

additional mitigating evidence that Carrasco had been gainfully employed and working multiple jobs during the time he had absconded from probation. And, third, he contended the trial court had abused its discretion at sentencing by speculating, in the absence of any evidence, that Carrasco also had driven after drinking alcohol on other occasions during the period of time when he had absconded from probation.

¶4 The trial court granted relief on the first claim, agreeing with Carrasco that ADOC had miscalculated his consecutive prison terms as totaling eight years, rather than the 5.5 years actually imposed. In its detailed minute entry ruling, the court reviewed Carrasco’s two remaining claims in depth and determined they did not warrant an evidentiary hearing. *See* Ariz. R. Crim. P. 32.6(c) (providing for summary disposition of claims presenting no “material issue of fact or law [that] would entitle the defendant to relief”). It found Carrasco had not demonstrated either deficient performance by counsel or resulting prejudice, and therefore had not stated a colorable claim of ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 689, 692 (1984). And it rejected his assertion that the court had relied improperly on its own unsubstantiated suspicions about his conduct in determining his sentence.

¶5 In his petition for review, Carrasco largely reiterates the assertions made in his petition for post-conviction relief, additionally contradicting—but not persuasively refuting—the dispositive factual findings and legal conclusions in the trial court’s ruling. He maintains, for example, that, had defense counsel adequately explained to the court at sentencing that Carrasco “was actually being a productive member of society” during the time he had absconded from probation, “[Carrasco] would not have received consecutive

sentences.” But, when the court expressly has found otherwise, such arguments to this court on review are unavailing.

¶6 We have examined the two claims Carrasco raised below on which the trial court denied relief and have reviewed its detailed discussion of those claims. We are satisfied the court has identified clearly, analyzed properly, and resolved satisfactorily each claim. We approve and adopt the court’s minute entry and find no abuse of its discretion in denying post-conviction relief. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly identified and ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”).

¶7 We grant Carrasco’s petition for review but deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Judge